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No. 95-381

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1995

CHRISTINA BELL CONNORS,
Petitioner,

v.

THE STERLING MILK COMPANY and WES TRIMBLE, ADMINISTRATOR, OHIO BUREAU OF WORKERS' COMPENSATION,
Respondents.

On Petition for Writ of Certiorari
to the Supreme Court of Ohio

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Respondent is satisfied with the Statement of the Case presented in Petitioner's Petition for Writ of Certiorari, but would add that the Petitioner has never alleged that she suffered any physical harm while in the course of her employment on February 18, 1991.

REASONS FOR DENYING THE WRIT

Petitioner assumes that the facts are uncontroverted that her mental condition was solely occasioned in the course of her employment. However, that issue has not been addressed at the trial court level since the matter was disposed of on a motion to dismiss. As an initial matter, it is important to point out that Petitioner has not even alleged or established that the lower courts are divided on the issue of whether the limitation of purely mental injuries violates Equal Protection.

Petitioner's arguments, that the Workers' Compensation law violates equal protection and that the state has no rational basis for legislating such a statutory classification, are without merit. As Petitioner argues, the appropriate standard of review for an equal protection claim is dependent on whether the right is fundamental or the classification is suspect. In the case *sub judice* the appropriate standard of review is encompassed in the "rational basis" test, since the classification does not burden a suspect group or a fundamental interest. *Vance v. Bradley*, 440 U.S. 93, 97 (1979). The denial of coverage for mental disorders based solely upon stress does not violate equal protection of the law. This Court has determined that legitimate state interests can be and are sufficient to permit a state to establish a classification scheme in areas of economic and social legislation. *Geduldig v. Aiello*, 417 U.S. 484 (1974).

In *Dandridge v. Williams*, 397 U.S. 471 (1970), the United States Supreme Court addressed the issue of classification schemes in social and economic legislation.

The Court held that the Equal Protection Clause does not require a state to choose between attacking every aspect of a problem or not attacking the problem at all. As the court noted at 397 U.S. at pg. 485:

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." ... "The problems of government are practical ones and may justify, if they do not require, rough accommodations -- illogical, it may be, and unscientific." ... "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." ...

Plainly, there are ample legitimate grounds for Ohio's statutory scheme: (1) the state has a legitimate interest in maintaining the self-supporting nature of its Workers' Comp nsation Fund; (2) the state has a legitimate interest in distributing the available resources to the disabilities determined by the state to be covered rather than to cover all disabilities inadequately; and (3) the state has a legitimate interest in maintaining a contribution rate at a level that will not unduly burden participating employers. *See*, *Connors v. Sterling Milk Co.*, 98 Ohio App.3d 711 (1993) (dismissed as having been improvidently allowed in 72 Ohio St.3d 1208). This test has been applied in other Ohio appellate districts

which have upheld Ohio's ban on purely mental injuries. *Andolsek v. Kirtland*, 99 Ohio App.3d 333 (1994); *Neil v. Mayfield*, No. 10881, unreported (2d App. Dist., July 22, 1988); *Fields v. City of Youngstown*, No. 89, unreported (7th App. Dist., May 30, 1989); *Duty v. Connor*, No. 44164, unreported (8th App. Dist, Sept. 2, 1982). Hence, there exist several "reasonable bases" to support the state's classification scheme. *See generally,* Fred J. Pompeani, *Mental Stress and Ohio Workers' Compensation: When is a Stress Related Condition Compensable?*, 40 Clev. St. L. Rev. 55 (1992).

Based upon the authority cited herein, Ohio Revised Code 4123.01(C)(1) does not violate the Equal Protection Clause of the Fourteenth Amendment. The State of Ohio has a legitimate interest in the maintenance and fair distribution of its workers' compensation fund, and a reasonable basis for denying coverage to workers who allege mental conditions without a contemporaneous physical injury or previously allowed occupational disease.

Further, and in response to Petitioner's second proposition, the irrebuttable presumption analysis is inapplicable in challenges to aspects of social welfare programs. *Jackson v. O'Bannon,* 633 F.2d 329, 339 (3rd Cir. 1980). Ohio Rev. Code Section 4123.01(C)(1) is a legislative classification. Thus, the standard of review remains whether the classification is rationally related to a legitimate state interest, and not whether the statute creates an irrebuttable presumption. As one appellate court has noted: "[C]ongressional judgments in the form of irrebuttable presumptions in the economic area will be upheld where there is a rational relationship between the criteria set forth in the statutory mandate and a legitimate Congressional

purpose." *Sakol v. C.I.R.*, 574 F.2d 694, 698 (2d Cir., 1978), cert. denied, 439 U.S. 859 (1978). The legislature may not invidiously discriminate or legislate on the basis of criteria which bear no rational relation to a legitimate legislative goal. *Weinberger v. Salfi*, 422 U.S. 749, 772 (1975).

As previously stated, however, the State of Ohio has not discriminated in an invidious manner in the maintenance and fair distribution of its workers' compensation fund, and the state has several reasonable bases for denying coverage to workers who allege mental conditions without a contemporaneous physical injury or previously allowed occupational disease.

CONCLUSION

Wherefore, for the above-stated reasons, the Respondents request that this court deny the petition for a writ of certiorari.

Respectfully submitted,

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